COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 62 of 2002

Himanchal Road Transport
Corporation.
…. **Appellant.**

Versus

Smt. Manjeet Kaur
and others. ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.,
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 6-10-2001 passed in M.A.C. Petition No. 74 of 1996, Smt. Manjeet Kaur and others Vs. Omkar Chand and another, by Motor Accident Claims Tribunal/Addl.District Judge, I F.T.C. Dehradun (***in short the Tribunal***), whereby the learned Tribunal has allowed the claim petition and has awarded Rs.3,46,000/- as compensation along with interest @ 9% per annum, as mentioned in the impugned order, in favour of the claimants – respondents under Section 166 of the Act. Aggrieved, the owner-appellant has come up in appeal for setting aside the impugned judgment and award passed by the lenred Tribunal on the ground that the accident in question was not the result of rash and negligent on the part of driver of the appellant, but the motor accident was the result of own negligence of the deceased, who was going on motor cycle and the Tribunal has failed to appreciate the evidence on record.

Brief facts of the case, giving rise to the present appeal, are that Gurdev Jassal ***(the deceased)*** was coming back to his house on his Hero Honda motor bike No. UP 07E-4776 on 8-10-95. When he crossed Ashirvad Petrol Pump on Chakrata road, he was hit by a

bus No. HP-18-3553, being driven rashly and negligently by its driver, with the result the deceased sustained grievous injuries. The deceased was rushed to Doon Hospital, where he was declared dead. Hence, the claim petition has been field by his legal heirs/dependents. The Opposite Parties (driver and owner respectively of the offending bus) have filed their separate written statements and have contested the claim petition on different grounds. The learned Tribunal framed as many as four issues in the case. Ultimately, the learned Tribunal has come to the conclusion that the motor accident in question was caused due to rash and negligent driving by the driver of the offending bus and the accident was not caused due to rashness and negligence on the part of the motor-cyclist, the deceased. The Tribunal has further come to the conclusion that that the claimants are entitled to get compensation of Rs. 3,46,000/- for the death of the deceased. Accordingly, the Tribunal has decreed the claim for compensation of Rs. 3,46,000/- along with interest @ 9% per annum in favour of the claimants against the O.p.No.2-appelalnt.

We have heard learned counsel for the appellant, Mr. N.S.Negi, as well as learned counsel for the claimant-respondent, Mr. J.P.Joshi, and have carefully gone thought he entire material on record including the impugned judgment and award.

The only argument advanced on behalf of the appellant before us is that in the present case, the accident has not occurred to rash and negligent driving by the driver of the bus involved in the accident, but the motor accident was the outcome of the own negligence of the deceased Gurdev Singh Jassal, who was not driving his motor cycle properly. Therefore, it has been argued that the findings of the lenred Tribunal are perverse and not based on the evidence on record. We have considered the submissions made on behalf of the appellant in the light of the entire material available on record. From a perusal of the record, it is evident that the learned Tribunal had framed specific Issues on the point of rash and

negligent driving by the driver of the offending bus as well as rash and negligent driving by the motor cyclist, the deceased himself. The claimants, in order to prove its case, has examined P.W.1, Manjeet Kaur, P.W.2 Praveen Chandana and P.W. 3 Trilok Singh, Out of these three witnesses, P.W.2 is the eye witness, who has given ocular version of the accident. This witness has stated on oath that he was going on his scooter on the date of accident. The offending bus overtook this witness. A little thereafter, he heard high sound and saw that a motor cycle had fallen on the road and few persons including the deceased were lying unconscious on the side of the road. This witness has been cross-examined on behalf of the appellant as well as O.P.No.1 the driver of the bus. Moreover, there are First Information Report, medical and post mortem reports, etc. on the record, From a perusal of the First Information report it stands prima facie roved that the accident in question was caused due to rash and negligent driving by the driver of the offending bus. The learned counsel for the appellant could now point out as to why a false report have been lodged against the driver of the offending bus. There is nothing on record to lead us to infer that the first informant was inimical to the driver of the bus. The opposite parties have examined O.P.No.1 Omkar Chand, the driver of the appellant. This witness has,however, tried to state that the accident in question was caused due to rashness and negligence on the part of the deceased. From the testimony of the witness Omkar Chand, it comes out that he has admitted the factum of accident, because this witness has clearly stated that the deceased was under the influence of liquor at the time of accident. Thus, the testimony of this witness itself goes against the case of the O.P.No.1 Onkar Chand himself, who has denied any accident having been occurred with his bus. These are very strong circumstances, who go the root of the case, therefore, it does not lie in the mouth of the appellant that the bus no. HP-18-3553 was not involved in the accident. In the totality of the evidence on record, it stands proved that the motor accident resulting into injuries and death of the deceased Gurdev Singh Jassal was caused due to rash and negligent driving by the driver of the offending bus.

The learned Tribunal has, therefore, rightly decided Issue Nos. 1 and 2 in favour of the claimant-respondents and against the appellant-O.P. We are unable to take a different view.

So far as the determination of compensation amount is concerned, this point has not been seriously challenged in the course of argument on behalf of the appellant. Even otherwise, we find that the deceased was aged 32 years. He was a businessman. The income of the deceased has been alleged by the claimants to be Rs. 5,000/- per month; but the Tribunal has assessed the income of the deceased at Rs. 3,000/- and after deducting 1/3rd towards personal expenses of the deceased, the monthly loss of dependency has been worked out at Rs. 2,000/- per month, thereby annual loss comes to Rs. 24,000/- per annum. The Tribunal has applied multiplier of ***14*** to determine total loss of dependency. Thus the total loss comes to 14 x 24,000 = Rs. ***3,36,000/-.*** The Tribunal has further awarded lump-sum amount of Rs. 10,000/- towards consortium, etc. and ultimately, compensation of Rs. ***3,46,000/-*** has been awarded in favour of the claimants. In our view, this amount of compensation is ***just compensation*** in the present case. The contention of the appellant that the compensation has not been properly computed by the Tribunal is totally misconceived. The Tribunal has committed no illegality or infirmity in the case under appeal.

No other point was urged or argued before us in this appeal.

In the result, the appeal is devoid of merit and is liable to be dismissed.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants.

17-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP